Supreme Court, U.S.
FILED

No. 01-1570 FEB 6 - 2002

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL JACOBSON,

Petitioner

V.

ANN VENEMAN, SECRETARY, UNITED STATES DEPARTMENT OF AGRICULTURE

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

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PETITION FOR WRIT OF CERTIORARI

MICHAEL JACOBSON
PRO SE
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GORDON NEBRASKA 69343
308-360-0963

10PP

QUESTION

Was it an abuse of discretion for the Court's refusal to transfer this cause under authority of 28 U.S.C. section 1631 to the Federal District Court?

TABLE OF AUTHORITIES CITED

CASES

American Beef Packers, Inc. v. I.C.C.
711 F. 2d 388 (1983)
Harris v. McCauley
814 F. 2d 1350, 1352 (9th Cir 1987)
Hill v. United States Air Force
795 F. 2d 1067, 1070 (D.C. Cir 1986)
United States v. United Food, Inc
533 U.S. ____ 2001

STATUTES AND RULES

7 U.S.C. section 2901-2911
28 U.S.C. section 2341-51
28 U.S.C. section 1631
28 U.S.C. section 1254 (1)

JURISDICTION

The date on which the United States Court of Appeals for the Eighth Circuit decided my case was September 4, 2001 and a copy of the order appears at Appendix A.

A timely petition for rehearing was denied by the United States Court of Appeals for the Eighth Circuit on November 8, 2001, and a copy of the order denying rehearing appears at Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1).

The jurisdiction of the Court of Appeals was invoked under the Administrative Orders Review Act 28 U.S.C. section 2341-51.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. section 1631 provides that:

> "Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds

that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred."

STATEMENT OF THE CASE

This Petition for review concerns the Eighth Circuit Court of Appeals' refusal to transfer this cause to the Federal District Court after making the decision that the Court did not have jurisdiction to hear the appeal of the actions taken by the Secretary of the Department of Agriculture regarding the Beef Promotion and Research Act, Pub. L. No. 99-198, Title XVI, section 1601, 99 Stat. 1597 (codified as amended at 7 U.S.C. section 2904-11). The Act requires cattle producers and importers to finance a national beef promotional campaign by paying a one dollar assessment on each head of cattle sold. The program is discontinued if a majority of beef producers oppose it in a referendum, and a referendum may be held if ten percent of beef producers request one. The Livestock Marketing Association sponsored a drive to obtain petitions from cattle producers

requesting the Secretary to conduct a referendum on the Beef Promotion and Research Order.

The United States Supreme Court on June 25, 2001 decided United States v. United Foods, Inc, 533 U.S. ___ 2001 which held that the assessment requirement contained in the Mushroom Promotion, Research, and Consumer Information Act, 104 Sta. 3854, 7 U.S.C. Section 6101, violates the First Amendment.

Petitioner is a resident of Sheridan County, Nebraska and a registered voter. He is a third generation farmer and rancher and has been a cattle producer for over 40 years. He has a livestock identification brand registered in Nebraska and South Dakota. His Aberdeen Angus Association number is 281627. On August 12, 1998 on or about 6:30 PM at the Crawford Livestock Market in Crawford Nebraska, Petitioner did correctly and legally fill out a Petition card provided by the Livestock Marketing Association as required in regard to title 7 U.S.C. section 2906 (b)(c).

In November 1999 the Livestock Marketing Association submitted the petitions to the U.S.D.A. On February 5, 2001, the United States Department of Agriculture issued a final report through the Price Waterhouse Cooper accounting firm. Price Waterhouse utilized a statistical method for estimating the number of valid signatures. 127,927 petitions were submitted to the U.S.D.A. Only

2,667 were even looked at. The Petitioners vote was not one of the 2,667.

Petitioner filed a Petition for Review with the 8th Circuit Court of Appeals in a timely manner.

REASONS FOR GRANTING THE PETITION

Plaintiff in his Petition for rehearing included a request to transfer the case to the Federal District Court. Although Plaintiff did not move the Court to transfer the case until on Petition for rehearing it has been held that a motion to transfer is unnecessary because of the mandatory cast of 28 U.S.C. section 1631's instructions. Harris v. McCauley (In re Cauley) 814 F. 2d 1350, 1352 (9th Cir. 1987).

The Court's order does not reflect whether the Court considered Plaintiff's request that his claim be transferred to the Federal District Court. Passages of the legislative history indicate that Congress contemplated that 28 U.S.C. section 1631 would aid litigants who were confused about the proper forum for review. See S. Rep. No. 275, 97th Cong., 2d Sess. 11 (1981), U.S. Code Cong. And Admin News 1982, p. 11.

Once the Court has determined that it lacks jurisdiction, but that another Court has authority to hear the case, the Court must reconsider whether the action would have been timely if it had been filed in the proper forum on the date filed and if so, whether a transfer would be in the interest of justice. Hill v. United States Air Force 795 F. 2d, 1067, 1070 (D.C. Cir 1986); American Beef Packers, Inc. v. I.C.C. 711 F.2d 388 (1983).

The government in their brief submitted in the appeals court page 15, stated that it would not object to a transfer if the Court determines that it would be in the interest of justice.

On August 12, 1998, Plaintiff and his father drove over one hundred miles to Crawford Nebraska and signed the petition cards. Plaintiff's uncle and his two brothers from the heart of Mari Sandoz country also made the trip. There were approximately two hundred people in attendance and almost all signed the petition cards. There is unanimous support for the right to vote on this issue. There are over 125,000 cattle producers whose votes were never counted. If the USDA can mathematically factor out the right to vote through an accounting firm, the right to vote has been taken away. This is not in the "interest of justice"!

There is a discrepancy between the 8th Circuit and the 9th Circuit on the requirements for the "interest of justice". Plaintiff cannot find a decision by the United States

Supreme Court in regard to the requirements of the "interest of justice".

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Jacobson

Date: _____

APPENDIX A

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-1534

Michael Jacobson,	*	
	*	
Petitioner,	*	Petition for Review of
	*	an Order of the United
V.	*	States Department of
	*	Agriculture.
Ann Veneman, Secretary	*	
	*	
United States	*	[UNPUBLISHED]
Department of	*	
Agriculture	*	

Submitted: August 20, 2001
Filed: September 4, 2001

Before HANSEN, FAGG, and BEAM, Circuit Judges.

PER CURIAM.

Michael Jacobson petitions this court for review of the United States Department of Agriculture's (USDA's) decision not to hold a referendum on its beef checkoff program. Because we lack jurisdiction to review the USDA's decision, we dismiss the petition without prejudice.

Absent a statutory provision conferring jurisdiction upon the court of appeals, the district courts have exclusive jurisdiction to review those agency decisions subject to judicial review. See Jaunich v. United States Commodity Futures Trading Comm'n, 50 F.3d 518, 520 (8th Cir. 1995); Noland v. United States Civil Serv. Comm'n, 544 F.2d 333, 334 (8th Cir. 1976)(per curiam). The Beef Promotion and Research Act, 7 U.S.C. 2901-2911, which governs the beef checkoff program, does not include such a grant of jurisdiction.

Accordingly, we dismiss the petition without prejudice.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGTH CIRCUIT

No. 01-1534

Michael Jacobson	*	
	*	
Petitioner	*	Order Denying Petition
	•	for Rehearing and for
V.	*	Rehearing En Banc
Ann Veneman, Secretary	*	
United States Department	*	
Of Agriculture	*	
	*	
Respondent	*	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied. (5128-010199)

November 8, 2001

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit